Sarwari a/p Ainuddin v Abdul Aziz a/l Ainuddin

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22–183 OF 1991
MAHADEV SHANKAR J
1 DECEMBER 1995

Civil Law Act *— Interest Compounded interest — Award of interest on capital sum Interest of 8% awarded on whole sum from judgment date until full realization — Whether court could award interestCivil Law Act 1956 s 11(a)*

Civil Procedure *— Stay of execution — Application for — Pending appeal against successful inheritance claim — Court to release money paid into court — Defendant contends that plaintiff is poor — Risk that money would be dissipated — Advanced age of plaintiff — Whether appeal would be rendered nugatory — Whether there are special circumstances*

The defendant's father died intestate in 1944. The defendant took out letters of administration in 1948 and distributed the entire estate between himself and his brothers pursuant to a distribution order obtained in 1949. In 1991 the plaintiff, a daughter of the deceased who was deprived of her inheritance, sued the defendant for her portion. A sum was paid into court by the defendant. The court allowed the plaintiff's claim and valued the plaintiff's inheritance at RM547,847.21. Interest at the rate of 1% pa was ordered to be paid from the date the plaintiff's cause of action arose till the date of judgment. The defendant now applied for a stay of execution pending appeal and contended that the appeal would be nugatory as the plaintiff was unemployed, did not own any property and that there was a risk that the money would be dissipated. The defendant also contended that the award of the interest upon the capital amount from the date the plaintiff's cause of action arose till the date of judgment and interest of 8% pa on the total amount was unlawful as no interest was prayed for in the statement of claim and that s 11(a) of the Civil Law Act 1956 prohibited interest upon interest.

After the court made its decision, the defendant informed the court that an application would be made to the Court of Appeal for a stay of execution and applied for a limited stay until the application to the Court of Appeal had been heard. The defendant also applied for the court to direct the plaintiff to give an undertaking that in the event of the appeal succeeding the plaintiff would refund the sum paid to her.

Held, dismissing the defendant's application and making orders regarding the sum in the court's custody:

(1) In considering whether a stay should be granted, the poverty of the plaintiff was not a special circumstance except where there was no reasonable probability of getting the money back if the appeal succeeded. The risk of the plaintiff's dissipation of the money was a universal risk regardless of whether the plaintiff was rich or poor and a universal risk was not a special circumstance.

The onus of showing that an appeal would be nugatory unless the stay was granted was upon the defendant and on the facts, the defendant failed to do so (see pp 396F, 397G, D–E).

(2) The advanced age of the plaintiff was a good a reason for putting her in funds immediately as her victory would be of no use if she became infirm or had passed on. Further, if the matter ended up in the Federal Court, the plaintiff might have to wait for another three to four years for the final disposal of the case (see p 398A).

(3) With regard to the contention that no interest was prayed for in the statement of claim, the plaintiff's statement of claim contained a prayer for any other relief as may be just and this empowered the court to grant any relief which is required to do equity (see p 398E–F).

(4) The court could exercise its discretion in granting interest at 8% pa on the decretal amount consisting of the capital amount plus the accrued interest up to judgment date. This is because what the plaintiff claimed here was for the 1949 value of the inheritance which she was deprived of in 1994 Ringgit. As the court could not give her the land back because it had been sold to a third party, it was replaced with a sum of money the quantum of which included an interest element. Had the plaintiff receive her inheritance in 1949, she could have earned interest upon that capital, and she had to be compensated for that loss. The decretal sum thus arrived at was what the defendant had to pay by way of restitution for what the plaintiff had lost. The interest at 8% pa was awarded to the plaintiff on this amount until realization. At this stage of the case, the question as to whether the interest awarded was lawful or otherwise was not a matter for the court to decide but for the Court of Appeal (see pp 398D–E, 399C–E); *Bushwall Properties Ltd v Vortex Properties* [1975] 2 All ER 214 followed.

(5) The court could not grant a limited stay of execution after handing down its judgment because once the order for partial stay was made by the court, the matter was closed and the court was functus. The application to the Court of Appeal for stay was not an appeal against by order of partial stay but a collateral application which would be treated on its own merits (see p 400E).

(6) The court was not vested with any jurisdiction to direct the plaintiff to give the undertaking which the defendant required. In fiscal terms, the fruits of the plaintiff's litigation meant that the money paid to her was hers unless a higher court directed otherwise. It was also pointless to require an undertaking because if the defendant succeeded, the appellate court would order the plaintiff to repay the sum she had received and if the plaintiff did not comply, the defendant will be at liberty to enforce that order by execution or other due process (see p 400F–G).

A [**Bahasa Malaysia summary**

Bapa defendan telah meninggal dunia tanpa meninggalkan wasiat pada tahun 1944. Defendan telah mengambil surat kuasa mentadbir pada tahun 1948 dan telah membahagikan seluruh harta pusaka tersebut antara beliau sendiri dengan saudara-saudara lelaki beliau B menurut perintah pembahagian yang telah diperolehi pada tahun 1949. Pada tahun 1991, plaintif, anak perempuan si mati yang tidak mendapat hak daripada pewarisan tersebut, menyaman defendan untuk mendapatkan bahagian beliau. Sejumlah wang telah dibayar ke dalam mahkamah oleh defendan untuk bahagiannya. Mahkamah telah membenarkan tuntutan plaintif dan menaksir pewarisan plaintif C sebanyak RM547,847.21. Faedah pada kadar 1% setahun diperintahkan untuk dibayar daripada tarikh kausa tindakan plaintif dimulakan sehingga tarikh penghakiman. Defendan sekarang memohon satu penggantungan pelaksanaan sementara menunggu rayuan dan menegaskan bahawa rayuan tersebut akan menjadi tidak berguna memandangkan plaintif tidak mempunyai pekerjaan, tidak memiliki D apa-apa harta dan bahawa wujud risiko wang tersebut boleh dibazirkan. Defendan juga menegaskan bahawa award tentang faedah ke atas jumlah harta daripada tarikh kuasa tindakan plaintif dimulakan sehingga tarikh penghakiman dan faedah sebanyak 8% setahun ke atas jumlah keseluluhan tersebut adalah tidak sah di sisi undang-undang E keran tiada faedah yang telah dipohon di dalam pernyataan tuntutan dan bahawa s 11(a) Akta Undang-Undang Sivil 1956 melarang wujudnya faedah ke atas faedah.

Setelah mahkamah membuat keputusan, defendan memaklumkan kepada mahkamah bahawa satu permohonan akan dibuat ke Mahkamah Rayuan untuk satu penggantungan pelaksanaan dan F memohon satu penggantungan terhad sehingga permohonan kepada Mahkamah Rayuan tersebut didengar. Defendan juga memohon kepada mahakamh unutk mengarahkan plaintif memberi satu akujanji bahawa sekiranya rayuan tersebut berjaya, plaintif akan mengembalikan jumlah yang telah dibayar kepada beliau.

G

Diputuskan, menolak permohonan tersebut:

(1) Di dalam mempertimbangkan sama ada satu penggantungan patut diberikan, kemiskinan plaintif bukan merupakan satu keadaan yang istimewa kecuali di mana tiada kemungkinan yang munasabah untuk mendapat semula wang tersebut jika rayuan H gagal. Risiko lesapnya wang tersebut merupakan risiko sejagat tidak kira sama ada plaintif kaya atau miskin dan risiko sejagat tersebut bukanlah satu keadaan yang isitmewa. Beban untuk menunjukkan bahawa satu rayuan adalah tidak berguna kecuali jika penggantungan diberikan adalah ke atas defendan dan I berdasarkan fakta tersebut, defendan telah gagal berbuat sedemikian (lihat ms 396F, 397G, D–E).

(2) Umur lanjut plaintif merupakan sebab yang baik untuk memberikan wang kepada beliau serta-merta kerana kejayaan

beliau tidak akan berguna jika beliau tidak berdaya atau meninggal dunia. Tambahan pula, sekiranya perkara tersebut berakhir di Mahkamah Persekutuan, plaintif mungkin terpaksa menunggu tiga hingga empat tahun lagi untuk penyelesaian akhir kes tersebut (lihat ms 398A). A

(3) Berhubung dengan pendapat bahawa tiada faedah dipohon di dalam penyataan tuntutan, pernyataan tuntutan plaintif mengandungi tuntutan untuk apa-apa relif lain yang mungkin adil dan ini memberikan kuasa kepada mahkamah untuk memberikan relif yang dihendaki demi untuk ekuiti (lihat ms 398E–F). B

(4) Mahkamah boleh menggunakan budi bicaranya di dalam memberikan faedah pada 8% setahun ke atas jumlah dekretal yang mengandungi jumlah utama berserta faedah yang terakru sehingga tarikh penghakiman. Ini adalah kerana apa yang plaintif tuntut di sini adalah untuk nilai pewarisan tahun 1949 yang beliau tidak mendapat hak di dalam Ringgit tahun 1994. Oleh kerana mahkamah tidak dapat memberikan balik tanah tersebut kepada beliau kerana ia telah dijual kepada pihak ketiga, ia telah digantikan dengan sejumlah wang di mana kuantumnya termasuklah elemen faedah. Sekiranya plaintif menerima pewarisan beliau pada tahun 1949, beliau akan memperolehi faedah sehingga jumlah wang tersebut, dan beliau akan dapat menerima pampasan bagi kerugian tersebut. Jumlah dekretal tersebut, oleh itu, mencapai setakat mana yang defendan perlu bayar melalui restitusi terhadap apa yang tidak diperolehi oleh plaintif. Faedah pada 8% setahun telah diawardkan kepada plaintif pada jumlah tersebut sehingga realisasi. Pada peringkat kes ini, persoalan sama ada faedah yang diawardkan tersebut sah atau sebaliknya bukan merupakan perkara untuk diputuskan oleh mahkamah tetapi oleh Mahkamah Rayuan (lihat ms 398D–E, 399C–E); *Bushwell Properties Ltd v Vortex Properties* [1975] 2 All ER 214 diikut. C D E F

(5) Mahkamah tidak boleh memberikan satu penggantungan yang terhad selepas memberikan penghakiman kerana setelah perintah untuk penggantungan separa telah dibuat oleh mahkamah, perkara tersebut telah ditutup dan mahkamah adalah functus. Permohonan kepada Mahkamah Rayuan untuk penggantungan bukanlah rayuan terhadap perintah penggantungan separa tersebut tetapi merupakan satu permohonan kolateral yang seharusnya dinilai atas meritnya sendiri (lihat ms 400E). G H

(6) Mahkamah tidak diberikan apa-apa bidang kuasa untuk memberikan akujanji yang defendan hendaki. Di dalam terma fiscal, kelebihan yang diperolehi oleh litigasi plaintif bermaksud bahawa wang yang telah dibayar kepada beliau adalah kepunyaan beliau kecuali satu mahkamah yang lebih tinggi mengarahkan sebaliknya. Adalah juga tidak berasas untuk menghendaki satu akujanji kerana jika defendan berjaya, mahkamah yang mendengar rayuan akan memerintahkan plaintif supaya tidak mem- I

bayar semula jumlah yang telah beliau terima dan jika plaintif tidak menuruti, defendan akan berhak untuk menguatkuasakan perintah tersebut melalui pelaksanaan atau apa-apa proses lain yang patut (lihat ms 400F–G).]

[*Editorial note*: The defendant's application to the Court of Appeal for a stay of execution was allowed. No written decision was available at time of publication.]

Notes

For a case on compounded interest, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) para 2359.

For cases on application for stay of execution of judgment, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4252–4260.

Cases referred to

Bushwall Properties Ltd v Vortex Properties [1975] 2 All ER 214 (folld)
Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd [1989] 3 MLJ 40 (refd)
Hongkong & Shanghai Banking Corp v Chan Oi Lan [1991] 3 CLJ 2092 (refd)
Lee Kuan Yew v Jeyaretnam JB [1991] 1 MLJ 83 (refd)
Lim Eng Kay v Jaffar bin Mohammed Said [1982] 2 MLJ 156 (refd)
Mohamed Mustafa v Kandasami (No 2) [1979] 2 MLJ 126 (refd)
Orion Property Trust & Ors v Du Cane Court Ltd [1962] 3 All ER 466 (refd)
Syarikat Berpakat v Lim Kai Kok [1983] 1 MLJ 406 (refd)

Legislation referred to

Civil Law Act 1956 s 11(a)
Rules of the High Court 1980 O 47 r 1

T Gunaseelan (*Wan Majid & Mano*) for the plaintiff.
Lopes (*Kamaruddin & Partners*) for the defendant.

Mahadev Shankar J: This is an application by the defendant for a stay of execution pending appeal.

The plaintiff is now 67 years old. Her father died intestate in 1944. The defendant took out letters of administration in 1948, and effectively distributed the entire estate between himself and his brothers pursuant to a distribution order he obtained in 1949. The plaintiff was thus deprived of her inheritance. I valued this as at the date of judgment at RM547,847.21. I also ordered that the plaintiff be paid interest thereon from the date of her entitlement up to the date of my judgment. This came to another RM131,483.28. I then added these two sums to make up the decretal amount and ordered that the defendant pay 8% pa thereon until realization. It is this order the defendant now seeks to stay.

The defendant sold some of the lands he inherited from his father's estate and bought another estate in Batang Kali, which he registered in the names of himself and his son. When he was about to sell this estate, the plaintiff obtained an ex parte injuction restraining him from doing so. This injunction was set aside by consent upon terms that the defendant's half share of the sale proceeds be put on fixed deposit and the receipts be placed in the custody of this court.

The issue as to whether a stay should be granted has been hotly contested. All the authorities have been reviewed by my brother NH Chan J in *Che Wan Development Sdn Bhd v Co-operative Central Bank Bhd* [1989] 3 MLJ 40, except the following:

(1) *Mohamed Mustafa v Kandasami (No 2)* [1979] 2 MLJ 126;

(2) *Orion Property Trust & Ors v Du Cane Court Ltd* [1962] 3 All ER 466;

(3) *Lee Kuan Yew v Jeyaretnam JB* [1991] 1 MLJ 83.

The core factors in this equation which emerge from these cases can be summarized as follows:

(1) The court will not deprive the successful party of the fruits of his litigation until an appeal is determined unless the unsuccessful party can show special circumstances otherwise;

(2) The validity or correctness of the decision appealed from are not special circumstances;

(3) Special circumstances are circumstances which go to the enforcement of the judgment and not those which go to its validity or correctness. Merits or strong grounds of appeal are not special circumstances;

(4) Proof that a successful appeal would be nugatory is a special circumstance.

The courts have held that it is no small matter for a successful party to go without his damages for a long time, and that the poverty of the plaintiff by itself is not a special circumstance except where there was no reasonable probability of getting the money back if the appeal succeeded. It is not enough to contend that the plaintiff is impecunious and therefore incapable of making reimbursement. Evidence has to be adduced to prove that it is so.

Mr Gunaseelan counsel for the plaintiff contended that because the plaintiff had traced the original assets of the deceased's estate to the Batang Kali estate, the proceeds of the sale of the latter was in fact part of the deceased's estate and therefore the order I made was for equitable restitution, and not a money judgment.

With respect I cannot agree. Order 47 r 1 of the Rules of the High Court 1980 is clear. This is a money judgment and being so,

> ... the court may by order stay the execution ... either absolutely or for such period and subject to such conditions as the court thinks fit.

In *Syarikat Berpakat v Lim Kai Kok* [1983] 1 MLJ 406, Hashim Yeop Sani J confirmed that the court 'has an absolute and unfettered discretion to grant or refuse an application for stay'.

A This discretion must be exercised within the parameters. Subject to that limitation every decision on stay of execution being an exercise of judicial discretion can only be a decision on its own facts, and cannot be treated as judicial precedent and binding.

A word or two as to what is nugatory is not out of place. According to *The New Shorter Oxford Dictionary* it means 'trifling, of no value or importance, worthless, not valid, inoperative, useless, futile'.

In his affidavit the defendant says the plaintiff is unemployed, does not own any property of any sufficient value and therefore the appeal will be nugatory. Other grounds urged are that she waited 41 years to make her claim and she would not be prejudiced if she waits a little longer.

The plaintiff's response is that although she is unemployed she is not a pauper. She avers that she has financed this litigation both in terms of legal expenses and valuation reports. She further avers that she did not at any time tell the defendant about her financial condition. She thus leaves it to be implied that the defendant's assertion that she does not own any property of value, is pure speculation. But she has not listed any of her assets. She also claims that if the defendant's claim is allowed, the result will be that the denial of justice which she has suffered all these years will be further perpetuated.

Charting a course between these contentious submissions, I would observe first of all that the onus of showing that the appeal will be nugatory unless the stay is granted is upon the defendant. It is not enough to say that the plaintiff is poor. It has also to be shown that if the money is paid over there is no reasonable probability of getting it back.

Can the court infer from her alleged poverty that the plaintiff is the kind of person who was predisposed to dissipating all her assets? This would indeed be the case if it was shown that she was a person of such intemperate habits, that she would immediately upon receipt of the cash put it beyond the reach of the defendant.

But at best what can be said here is that there is a risk that the plaintiff will spend the money on intangible assets, or make some really bad investments. What worries me is that the law must be the same for everybody. The risk of dissipation is not confined to poor people. Indeed it could be demonstrably proved that people who are wealthy also embark upon disastrous financial ventures. A universal risk is not a special circumstance. A very real risk may be, depending on the facts of the case, but it has to be shown that there is something here which takes the matter out of what is ordinary. Otherwise, a stay of execution of a money judgment will be automatic in all cases where that money is in court.

On the other side of the scales is the concept of not depriving a successful party of the fruits of his litigation. The purpose of the court order is to put those fruits into the plaintiff's mouth. Who is the defendant whom the court has found liable, to say that she should not be allowed to chew them? Everything else being equal can we be so bold as to predict upon whom Dame Fortune will shower her favours with the passage of time? If the plaintiff invests her money wisely or even if she is just lucky she could even increase her wealth in the next few years.

The advanced age of the plaintiff is just as good a reason for putting her in funds immediately. What use is her victory to her personally after she becomes infirm or has passed on? Indeed if this matter ends up in the Federal Court, a time frame of another three to four years for the final disposal of this case may not be unrealistic. The plaintiff may not be as rich as the defendant today. Indeed the plaintiff's counsel has blamed the defendant for her present financial status. But the point is that on the evidence as it has been presented, the court is in no position to say that in two or four years time the plaintiff will be worthless, even if it will be difficult to say how much she will then be worth.

I also have to bear in mind that this was a very long trial. Many of the plaintiff's witnesses came from India. The legal costs must have been very substantial. And now there will be the costs of the appeal.

These are some of the factors relevant to the absolute discretion I must now exercise. Mercifully it is not an all or nothing situation because O 47 r 1 permits a partial stay.

There is one last point to be got out of the way. The defendant contends that one of the grounds why stay should be ordered is that I have done something which is unlawful by allowing 1% pa interest upon the capital amount from the day on which the plaintiff's cause of action arose and then 8% pa upon the decretal amount consisting of the capital amount plus accrued interest up to the date of judgment; because:

(1) No interest was prayed for in the statement of claim;

(2) Section 11(a) of the Civil Law Act 1956 prohibits interest upon interest.

The short answer to the first objection is that the statement of claim prayed for any other relief as may be just. I agree with plaintiff's counsel that these words are not just ornamental. They empower the court to give any relief which is required to do equity. See Salleh Abas FJ in *Lim Eng Kay v Jaffar bin Mohammed Said* [1982] 2 MLJ 156 at p 160. See also *Hongkong & Shanghai Banking Corp v Chan Oi Lan* [1991] 3 CLJ 2092 at p 2095.

The second objection is more apparent than real. Oliver J had to deal with precisely the same point in *Bushwall Properties Ltd v Vortex Properties* [1975] 2 All ER 214 at 225 where he said this:

> There is a further point in this connection which counsel for the defendants has raised. The amended statement of claim claimed interest under the Law Reform (Miscellaneous Provisions) Act 1934. Section 3(1) of the 1934 Act confers on the court a discretionary power to award interest on damages. Counsel for the defendants draws attention to the fact that the damages here claimed are calculated by reference to interest paid or lost and relates that fact to the provisions of proviso (a) to s 3(1) where it is provided that 'nothing in this section ... (a) shall authorise the giving of interest upon interest ...'. Thus, he argues, in this case the court has no statutory discretion. I cannot accept this submission. It appears to me that the proviso was clearly aimed at the sort of case where an interest-bearing debt is sued for (for instance, a mortgage debt or an instalment of interest in arrear). In such a case the court is not to award interest on such part of the sum claimed as represents contractual

> interest. Although what is claimed here is simply a replacement of a sum of money, the quantum of which is calculated by reference to interest which the plaintiffs have had to pay, the sum so claimed is not in any relevant sense interest itself; it is the sum payable by way of damages for breach of contract, and I see no reason why it should not be capable of carrying interest in the ordinary way.
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> In my judgment, therefore, the discretion conferred by the 1934 Act remains exercisable. In as much as the plaintiffs have had to incur payments which have depleted their general funds, or have lost the use of money which would, had it not been paid out for the immediate purchase, have produced an addition to their general funds by way of interest earned, which addition would itself have been available to earn interest, I do not see why in principle interest under the 1934 Act should not be awarded ... .

No part of Sarwari's claim against the defendant represents contractual interest. What she claimed was the 1949 value of the inheritance which she was deprived of in 1994 Ringgit. We could not give her the land back because it had been sold to a third party. So we had to replace it with a sum of money the quantum of which had to include an interest element. Had Sarwari got her inheritance in 1949 she could have earned interest upon that capital, and she must be compensated for that loss. The decretal sum thus arrived at is what the defendant has to pay by way of restitution for what the plaintiff has lost.

Theoretically Sarwari should have been paid the decretal sum on the day of judgment. It is notional capital in her hands and I do not see why interest at 8% should not be awarded to her on this amount until realization.

However whether the interest awarded was lawful or otherwise is not a matter for me but for the Court of Appeal, and I can only hope that my comments on the point may be of some interest.

In all the circumstances of this case, I order that at the immediate next date of maturity, all the fixed deposit receipts now with the court be cashed and:

(1) the sum of RM300,000 be paid out to the plaintiff in satisfaction pro tanto of her claim;

(2) The sum of RM75,000 be put on a new fixed deposit on monthly roll-over in the name of the plaintiff's solicitors and the fixed deposit receipt be lodged with the senior assistant registrar of this court to abide the taxation of the plaintiff's bill of costs. Upon extraction of the allocatur this deposit shall be cashed upon the maturity date falling due immediately thereafter, and shall be paid to the plaintiff's solicitors in satisfaction pro tanto of such allocatur;

(3) the balance sum after payment out of the RM300,00 and the provision of RM75,000 aforesaid, shall be placed upon a fresh fixed deposit in a bank in the joint names of the solicitors for the plaintiff and the defendant on a three monthly roll-over basis and the receipt shall be lodged with the senior assistant registrar of this court. This money plus all accrued interest thereon shall be disposed off as directed by the Court of Appeal.

Finally I order that the costs of this application be taxed and await the outcome of the appeal.

Immediately after I read this judgment, Mr Lopes of counsel for the defendant indicated to the court that he had instructions to apply forthwith to the Court of Appeal for a stay of execution with a view to ensuring that no part of the funds on fixed deposit be released to the plaintiff until the appeal was finally disposed of. He therefore applied for a limited stay of my orders until his proposed application to the Court of Appeal had been heard. He also applied for the court to direct the plaintiff to give an undertaking that in the event of the appeal succeeding the plaintiff would refund the sum paid to her. Mr Gunaseelan of counsel for the plaintiff objected to both the applications. As to the first, he said it was in the nature of an Erinford injunction and should be refused because the court had already refused a total stay. As to the second, he initially said that it would be pointless for the plaintiff to give an undertaking. When Mr Lopes interpreted this to mean that Mr Gunaseelan had said that the plaintiff's undertaking was worthless, Mr Gunaseelan explained that what he meant was that if the defendant succeeded in the appeal, the defendant would have to sue the plaintiff for the return of the funds paid to her.

I gave my reasons orally for dismissing both applications and said I would put them down in writing since this matter is going for further consideration.

I do not think it is open to me to grant the limited stay requested because once I had made my order for partial stay the matter was closed and this court was functus. The application to the Court of Appeal for stay is not an appeal against by order of partial stay but a collateral application which will be treated on its own merits. In any event to grant a limited stay would be inconsistent with the order I have just made.

Secondly, I do not think I am vested with any jurisdiction to direct the plaintiff to give the sort of undertaking the defendant requires. In fiscal terms the fruits of her litigation simply means that the money paid to her is hers unless a higher court directs otherwise. In my view the plaintiff is free to enjoy it in any manner she pleases. Indeed it would be pointless to require an undertaking because the order of the appellate court if the defendant succeeds, must be that the plaintiff do repay the sum she has received. If the plaintiff does not comply, the defendant will be at liberty to enforce that order by execution or other due process.

Accordingly I dismissed both applications and directed the senior assistant registrar to hand over the fixed deposit receipts to the plaintiff's solicitors so that the orders I had made could be carried out. I also gave general liberty to apply.

Order accordingly.

Reported by Chin En Tek